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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,140	02/13/2004	Mark D. Fabry	08350.1639-00000	3795

7590 02/28/2005

Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
1300 I Street, N.W.
Washington, DC 20005-3315

EXAMINER

NGUYEN, CUONG H

ART UNIT	PAPER NUMBER
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3661

DATE MAILED: 02/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/777,140	FABRY ET AL.	
	Examiner	Art Unit	
	CUONG H. NGUYEN	3661	

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/13/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is the answer to the communication received on 2/13/2004.
2. Claims 1-3 are pending in this application; applicants claim a priority date for a provisional application submitted on 2/14/2003.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraph of 35 U.S.C. § 102 in view of the AIPA and H.R. 2215 that forms the basis for the rejections under this section made in the attached Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

35 U.S.C. § 102(e), as revised by the AIPA and H.R. 2215, applies to all qualifying references, except when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. For such patents, the prior art date is determined under 35 U.S.C. § 102(e) as it existed prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. § 102(e)).

3. Independent claims 2-3 are rejected under 35 U.S.C. § 102(e) as being anticipated by Furukawa et al. (US Pat. 6,644,272), or Levine (US Patent Application Publication 2002/0016653 A1).

Furukawa et al., or Levine teach(es) a power management system/method, comprising:

- a power source configured to receive a fuel supply (see Furukawa et al., or Levine, Fig.1);
- a transmission being drive ably engaged with the power source (Furukawa et al.'s diesel engine inherently has this feature; or see Levine, Figs.4A, 5); and
- a control system in communication with the power source and the transmission (see Furukawa et al., Fig.7; or see Levine Fig.5); the control system being configured to modify a fuel supply limit (see Furukawa et al., Figs.6, 12, flow adjuster 10, 15:30-36, and 15:60 to 16:2; or see Levine claims 11, 18).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Independent claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levine (US Patent Application

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Publication 2002/0016653 A1) in view of Cochofel et al. (US Patent Application Publication 2001/0005803 A1).

Levine teaches a power management system for a machine (see Levine, para [0002] lines 1-3) , comprising:

- a power source configured to receive a fuel supply (see Levine, Fig.9 wherein a FUEL VALVE supplies fuel to an ENGINE/a power source);
- a transmission being drive ably engaged with the power source (this is inherently existed in Levine's vehicle; and
- a control system in communication with the power source and the transmission (see Levine, Fig.5 wherein sensors feed back sensing signals from "transmission" and "power source" (ODOMETER 64a, SPEED 61, WHEELS 73 etc.) to AN ANALYZER 63, the control system being configured to determine a fuel supply limit associated with a desired speed of the power source (see Levine, Fig.9).
- Levine does not disclose that a fuel supply limit being determined from a fuel curve associated with the machine, wherein the control system is able to modify the fuel curve based on a load condition of the power source.

However Cochofel et al. disclose that limitation (see Cochofel et al., claim 20).

It would have been obvious to one of ordinary skill in

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the art at the time of invention to combine Cochofei et al.'s method and Levine et al.'s idea because Cochofei et al. using a programmable controller to drive output power control based on changes in load, fuel, and speed.

5. Remark: Applicants claim "a power steering system" comprising components, modules, or physical structures that making up that system; therefore, using the claimed words of "capable of" are obvious with other power steering systems, the examiner suggests of using the terms "configure to" for narrowing the claimed system comprising those claimed functions.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CUONG H. NGUYEN whose telephone number is 703-305-4553. The examiner can normally be reached on 7:15am - 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THOMAS G. BLACK can be reached on 703-305-8233. The fax phone number for the organization where this application is assigned is 703-305-7687.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Cuonghnguyen

CHN
CUONG H. NGUYEN
Primary Examiner
Art Unit 3661